

**COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION**

FISCAL NOTE

L.R. No.: 0211-11
Bill No.: Truly Agreed To and Finally Passed SS #2 for SS for SCS for SB 2
Subject: Alcohol; Drugs and Controlled Substances; Employees - Employers; Employment Security; Labor and Industrial Relations Dept.; Labor and Management
Type: Original
Date: May 20, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
Total Estimated Net Effect on General Revenue Fund	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Total Estimated Net Effect on Other State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Unemployment Compensation Trust Fund	Unknown*	Unknown*	Unknown*
Total Estimated Net Effect on <u>All</u> Federal Funds	Unknown*	Unknown*	Unknown*

*** Does not reflect potential loss of federal administrative grants due to possible noncompliance with federal law.**

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

All Provisions

Officials from the **Office of the Governor, Office of the Lieutenant Governor, State Treasurer's Office, State Auditor's Office, Office of the Attorney General, Missouri Senate, Missouri House of Representatives, Office of the State Public Defender, Office of the State Courts Administrator, Office of Administration – Divisions of Accounting and Personnel, Department of Economic Development – Division of Workforce Development** and the **Department of Public Safety** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Department of Conservation (MDC)** assume the proposal would not have significant impact on MDC funds.

Officials from the **Office of Prosecution Services** assume any costs related to this proposal can be absorbed.

ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** state they cannot predict the number of new commitments which may result from the creation of the offenses(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court. If additional persons are sentenced to the custody of the DOC due to the provisions of this proposal, the DOC will incur a corresponding increase in operational cost either through incarceration or through supervision provided by the Board of Probation and Parole. Supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. DOC states eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually; however, due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 annually.

Officials from the **Department of Transportation (MoDOT)** state the fiscal impact of the proposal is unknown. The issuance of the bonds may have a negative fiscal impact upon MoDOT if its contribution amount is increased due to payment of principal, interest, and administrative expenses related to the bonds. If this occurs, amounts available for state and local highway projects could be decreased.

Proposed §285.300

Officials from the **Department of Labor and Industrial Relations (DOL)** state this section requires the Department's Division of Employment Security to cross-check unemployment claims against the federal new-hire list. This list is not currently available but would put in statute authorization to do so once available.

Proposed §288.036

Officials from the **Department of Labor and Industrial Relations (DOL)** state this section of the proposal calculates the taxable wage base (TWB) at \$8,000 effective upon the enactment of the proposal. DOL notes this section also changes the trigger levels to allow a \$1,000 increase in the TWB when the September 30th balance is below \$350 million, and decrease the TWB by \$500 when the September 30th balance exceeds \$550 million.

Proposed §288.038

Officials from the **Department of Labor and Industrial Relations (DOL)** state this section of the proposal prevents the maximum weekly benefit amount (MWBA) from increasing during times when the unemployment compensation trust fund is insolvent or until twenty-four (24) months have elapsed after the fund has regained solvency.

ASSUMPTION (continued)

Proposed §288.040.1(2)(c) and §288.040.2

Officials from the **Department of Labor and Industrial Relations (DOL)** assume the proposal could decrease the amount of benefits paid under the suspension and discharge provisions for failing to pass a drug test. DOL notes that (1) reasonable suspicion in the case of a random test, (2) conduct showing impairment to the extent that it has an impact on the work place, or (3) the individual is in a safety sensitive position, would no longer be required for misconduct to apply. Based on the calendar year 2001, DOL approximates 43 claims could have been affected if the proposal had been enacted, resulting in an estimated savings of \$121,000 to the Unemployment Compensation Trust Fund (UCTF). DOL notes the Division of Employment Security is not able to identify other claims under the suspension and work search provisions that could have been affected. DOL assumes the impact to the UCTF cannot be predicted and is, therefore, unknown.

Proposed §288.040.1(4)

Officials from the **Department of Labor and Industrial Relations** assume discontinuing payment for the waiting week as provided in the proposal would reduce the amount of benefits paid by approximately \$20 million annually.

Proposed §288.050

Officials from the **Department of Labor and Industrial Relations** provided the following response:

Section 288.050 codifies the definition of misconduct currently established in case law. In addition, currently, a "positive chemical test" as described in the proposal is not required for the Division of Employment Security to find misconduct when an individual is discharged for being under the influence of alcohol. The employer smelling alcohol on the individual's breath with other symptoms such as slurred speech is sufficient. The proposal continues to allow misconduct to be found under current guidelines.

Currently, misconduct is found, when an individual is discharged or suspended, for failing a drug test when: (1) the policy to test is part of a collective bargaining or hiring agreement and the individual has prior knowledge of such an agreement; and, (2) in the case of a random test there is reasonable suspicion the person is under the influence on the job; or, (3) there is conduct showing impairment to the extent that it has an impact on the work place; or, (4) the individual is in a safety sensitive position. This is providing the test procedures are reliable with supporting documentation.

Under the proposal, the conditions under two, three and four described above would be removed. Removing these conditions would increase the number of claims denied benefits and could

ASSUMPTION (continued)

decrease the amount of benefits paid, depending on whether or not the claimant earns sufficient subsequent insured wages to remove the disqualification.

Currently under statute, when an individual is suspended for misconduct connected with the work, he/she is denied benefits for the entire period of the suspension. If the individual is discharged for the same reason, he/she is assessed four to sixteen weeks of disqualification depending on the severity of the misconduct.

Under the proposal, the Division of Employment Security would disqualify a claimant when an employer suspends an individual for four or more weeks. This change will provide a more fair and uniform penalty for individuals suspended and discharged for the same reason without removing the less-severe ineligibility penalty for individuals suspended less than four weeks.

Currently under statute, when an individual is disqualified from receiving benefits a penalty period of weeks (ranging from 4-16) is assigned. The claimant can either serve those weeks or earn insured wages subsequent to the disqualifying act, equal to or exceeding eight times their benefit amount. If a claimant has multiple disqualifications, and earns eight times their benefit amount after the last disqualifying act all the disqualifications are satisfied and removed.

Under the proposal, a claimant would have to earn eight times their benefit amount in subsequent insured wages for each disqualifying act.

In addition, it allows an offer of suitable work to be conclusively established if an employer notifies the claimant in writing of such offer by sending an acknowledgment via any form of certified mail issued by the United States Postal Service.

Proposed §288.060

Officials from the **Department of Labor and Industrial Relations** state this section would make pay (including termination and severance pay) earned by an elected official considered as wages when calculating the claimant's weekly benefit amount.

Proposed §288.110

Officials from the **Department of Labor and Industrial Relations (DOL)** state, currently, when a liable employer acquires another liable business, the experience of both businesses is combined and a new contributions rate is calculated. The new rate is effective with the date of the acquisition. If the new rate is different than the existing rate of the successor, then wages paid before the acquisition and wages paid after the acquisition, must be reported by the employer on separate quarterly reports in order to calculate the amount of contributions due

ASSUMPTION (continued)

under each rate for the quarter. DOL notes, under the proposal, when the date of the acquisition is not the first day of a quarter, then the existing rate would continue through the end of the quarter and the new rate would apply to the first day of the following quarter. DOL assumes separating the wages and the quarterly report would no longer be required.

Oversight inquired of DOL to determine if there would be savings associated with separate reports no longer being required and learned there could be an unknown savings to both employers and the DOL; however, DOL assumes the impact would be very minimal.

Proposed §288.128

Officials from the **Department of Labor and Industrial Relations** state this section allows for principle, interest, and administrative cost related to bonding to be collected with the assessment currently established for the collection of interest payments due on Title XII advances.

Proposed §288.270

Officials from the **Department of Labor and Industrial Relations** state this section allows the employment and reemployment services provided by state departments, divisions, and agencies with Wagner-Peyser monies to be contracted with private entities.

Officials from the **Department of Economic Development – Division of Workforce Development** assume the proposal would have no fiscal impact on their agency.

Proposed §288.310

Officials from the **Department of Labor and Industrial Relations** state this section provides that monies collected for the payment of principle, interest, and administrative cost related to the bonding are to be deposited into the Special Employment Security fund.

Proposed §288.330

Officials from the **Department of Labor and Industrial Relations** state this section adds language allowing bonding as a method of financing the replenishment of the unemployment compensation trust fund, as an alternative to borrowing from the federal government.

Proposed §288.385

Officials from the **Department of Labor and Industrial Relations** state this section prohibits the director of the Division of Employment Security, any officer, employee, agent or deputy, former director, officer, employee, agent or deputy of the division, any person engaged or

ASSUMPTION (continued)

retained from the division from permitting the inspection or use of, or to divulge to anyone any information relative to any report or return or any information obtained by an investigation conducted by the department.

Proposed §288.395

Officials from the **Department of Labor and Industrial Relations** state this section provides that any person receiving benefits, who perpetrates fraud or misrepresentation, shall be guilty of a class A misdemeanor and subject to a fine not to exceed \$10,000 or double the value of the fraud, whichever is greater. Any person found guilty of second or subsequent acts of perpetrating fraud pursuant to this section shall be guilty of a class D felony.

In Conclusion

DOL states the language in section 288.050(3) appears to conflict with section 3304(a)(5), FUTA. Federal law requires that no claimant may be denied for failure to accept new work under any of the following conditions: 1.) if the position offered is vacant due directly to a strike, lockout, or other labor dispute, 2.) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality, 3.) if as a condition of being employed the individual would be required to join a company union or to resign or refrain from joining any bona fide labor organization. The Agency has the responsibility to determine if the individual has refused suitable work (as defined by 3304(a)(5), FUTA) See UIPL 4-98 and change 1. This legislation shifts that function to the employer.

DOL also notes another potential conformity issue may exist with respect to privatizing employment and reemployment services paid for with Wagner-Peyser monies as proposed in section 288.270.

If Missouri's law is determined to be out of conformity with Federal law, the consequence could be a loss of certification for FUTA credits. A loss of certification would cause (1) contributing Missouri employers to lose as much as \$997 million annually in FUTA credits and (2) the Division of Employment Security (DES) to lose approximately \$40 million annually in administrative funds.

Oversight assumes the overall impact of the proposal will cause a positive impact to the Unemployment Compensation Trust Fund.

Oversight assumes that any loss of federal funds would depend upon determination of a nonconformity/noncompliance and the imposition of sanctions by the United States Department of Labor. The likelihood of such sanctions would be speculative. For fiscal note purposes, no impact to federal funds is reflected.

<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 mo)	FY 2005	FY 2006
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GENERAL REVENUE

Costs – Department of Corrections

Probation/Incarceration	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
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ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
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FEDERAL FUNDS

**UNEMPLOYMENT
COMPENSATION TRUST FUND**

Savings – DOL

Potential Decrease in Benefits Paid	Unknown	Unknown	Unknown
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ESTIMATED NET EFFECT ON UNEMPLOYMENT COMPENSATION TRUST FUND	<u>Unknown*</u>	<u>Unknown*</u>	<u>Unknown*</u>
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*** DOES NOT REFLECT POTENTIAL LOSS OF
FEDERAL ADMINISTRATIVE GRANTS DUE TO
POSSIBLE NONCOMPLIANCE WITH FEDERAL
LAW.**

<u>FISCAL IMPACT - Local Government</u>	FY 2004 (10 Mo)	FY 2005	FY 2006
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small businesses could be relieved of paying unemployment claims filed by individuals who were discharged for failing or refusing a drug test. Conversely, this proposal could cause an additional tax on businesses to cover Federal Unemployment Tax Act moneys that would no longer come to the state, depending upon conformity with federal law and any sanctions imposed by the United States Department of Labor.

DESCRIPTION

This proposal makes several changes to the law concerning employees. The proposal:

- (1) Requires the Division of Employment Security to cross-check unemployment compensation recipients against the federal new hire database monthly (§285.300);
- (2) Exempts unemployment insurance claimants from the "seeking work" requirement if they are participating in a state-approved drug or alcohol treatment program (§288.040.1(2)(c));
- (3) Removes the provision that "the one-week waiting period shall become compensable after unemployment during which benefits are payable for nine consecutive weeks" when determining eligibility exceptions for benefits (§288.040.1(4));
- (4) Defines "misconduct" in connection with work as including acts of wanton or willful disregard of the employer's interest, deliberate violation of rules, disregard of standards of behavior or excessive negligence. Suspensions of four weeks or more shall be treated as a discharge. A positive test result for controlled substances or for blood alcohol content of eight-hundredths of 1 percent or more shall be deemed misconduct connected with work. The employer must have a written policy on drugs and alcohol (§288.040.2);
- (5) Requires an offer of suitable work shall be conclusively established if an employer notifies the claimant in writing of such offer by sending an acknowledgment via any form of certified mail issued by the United States Postal Service stating such offer to the claimant at his or her last known address. Nothing in this subdivision shall be construed to limit the means by which the deputy may establish that the claimant has been sufficiently notified of available suitable work (§288.050.1(3)).
- (6) Requires that if a deputy of the division determines that an unemployment insurance claimant has been discharged due to misconduct in connection with work that the claimant be disqualified from waiting week credit and benefits. Current law allows deputies of the division to consider the seriousness of the misconduct in each case and disqualify claimants for not less

DESCRIPTION (continued)

than four and not more than 16 weeks (§288.050.2);

(7) Requires any type of pay received by an eligible insured worker who is a member of the organized militia shall not be considered wages when determining the amount a partially unemployed employee is entitled to receive in a given week. Currently termination and severance pay are the only types of pay which are not considered wages (§288.060.3);

(8) Removes the salaries of elected officials from those salaries which are not considered wages when determining the amount a partially unemployed employee is entitled to receive in a given week (§288.060.3);

(9) Requires the division to recalculate the contribution rate of a newly acquired business on the first day of the next calendar quarter after acquisition instead of on the date of acquisition (§288.110);

(10) Prohibits the disclosure of confidential information related to employment security. Unlawful disclosure is a class D felony (§288.385).

This proposal is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations
Office of the Governor
Office of the Lieutenant Governor
State Treasurer's Office
State Auditor's Office
Office of the Attorney General
Missouri Senate
Missouri House of Representatives
Office of the State Public Defender
Office of the State Courts Administrator
Office of Administration – Divisions of Accounting and Personnel
Department of Economic Development – Division of Workforce Development
Department of Public Safety
Department of Conservation
Office of Prosecution Services
Department of Corrections
Department of Transportation



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